

### REMARKS

This responds to the Office Action dated May 16, 2005, and the references cited therewith.

Claims 1 and 11 are amended, and claims 6 and 16 are cancelled. Claims 1-5, 7-15, and 17-22 are now pending in this application.

#### §102 and §103 Rejection of the Claims

Claims 1, 4, 6, 9-11, 14, 16, 19-20 and 22 were rejected under 35 U.S.C. § 102(b) as being anticipated by Ripart (U.S. Patent No. 6,385,485). Claims 2, 5, 7-8, 12, 15, 17-18 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ripart (U.S. Patent No. 6,385,485). Claims 3 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ripart (U.S. Patent No. 6,385,485) in further view of Lekholm (U.S. Patent No. 4,763,646). Claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ripart (U.S. Patent No. 6,385,485) in further view of Zhu et al. (U.S. Publication No. 2003/0220582A1). The rejections are traversed and reconsideration is respectfully requested.

Claims 1 and 11 have been amended herein to incorporate the limitations formerly recited by claims 6 and 16, respectively, the latter two claims being cancelled. Claims 1 and 11 now recite that a death event is detected based upon there being no detection of intrinsic activity and evoked responses to paces only if a pacing artifact is also detected. In rejecting claims 6 and 16, the Office Action states that “if a pacing pulse was delivered, then there would be a pacing artifact.” The Office Action then states that “Furthermore, if no intrinsic beats and no evoked response were detected, then there would inherently be only a pacing artifact.” Applicant takes issue with both of these statements. A pacing artifact occurs only if a pacing pulse causes a large amplitude voltage spike which is detected by a sensing channel. A failure in either the pacing delivery system or the sensing channel of the device (e.g., dislodgement of a sensing or pacing lead or an internal circuitry failure) could cause there to be no pacing artifact when a pace is delivered.

The purpose of detecting a death event only if a pacing artifact is detected when a pace is delivered is to ensure the integrity of the pacing and sensing functionality of the device and

prevent false detection of a death event. For example, if no intrinsic cardiac activity and no evoked responses to paces are detected, it could be the case that the patient has died. It could also be the case, however, that the patient has not died but that the sensing circuitry has for some reason been rendered incapable of detecting either intrinsic activity or evoked responses. Detection of a pacing artifact upon delivery of a pace means that the sensing capability of the device is intact and distinguishes between these two possibilities.

Applicant finds no teaching or suggestion in Ripart or the other prior art references of record for detecting a death event when no intrinsic cardiac activity and evoked responses to paces are detected only if, in addition, a pacing artifact is also detected when a pace is delivered. Claims 1 and 11 are therefore respectfully submitted to be patentable. Dependent claims 2-5, 7-10, 12-15, and 17-22 recite additional limitations to the subject matter recited by either claim 1 or 11, which limitations are also asserted to be neither taught nor suggested by the cited prior art in that context. In particular, claims 7, 8, 17, and 18 recite detecting a death event only if a preceding episode of fibrillation has occurred, for which applicant finds no teaching or suggestion in the cited references. Claims 2-5, 7-10, 12-15, and 17-22 are thus respectfully submitted to patentably define over the prior art of record.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (847) 432-7302 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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9-16-05

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16 day of September, 2005.

Name

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Signature

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